

ALJ/JLG/avs

Decision 01-08-010 August 2, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Pacific Bell (U 1001 C), a Corporation, for Authority for Pricing Flexibility and to Increase Prices of Certain Operator Services, to Reduce the Number of Monthly Directory Assistance Call Allowances, and Adjust Prices for Four Centrex Optional Features.

Application 98-05-038
(Filed May 5, 1998)

**OPINION ON REQUEST
FOR INTERVENOR COMPENSATION**

This decision grants The Utility Reform Network (TURN) an award of \$104,292 in compensation for its substantial contributions to Decisions (D.) 99-11-051, D.00-03-042, and D.00-11-042. This amount is approximately \$6,600 (or 6%) less than TURN requested.

1. Background

TURN timely filed its Request for Compensation on January 4, 2001. Pacific Bell (Pacific) filed a Reply on February 5, 2001. TURN filed a Reply to the Response of Pacific Bell on February 20, 2001.

In D.99-11-051, the Commission authorized Pacific to establish a Directory Assistance (DA) price floor of \$ 0.35 and to increase its DA tariff price and ceiling rate from \$ 0.25 to \$ 0.46. The Commission decreased Pacific's monthly DA call allowance for residential customers from five to three calls, for business customers from two to zero, and for Centrex business customers from one to zero. The Commission increased Pacific's Busy Line Verification (BLV) and

Emergency Interrupt (EI) service price floors to cover costs. D.99-11-051 also increased the tariff price from \$ 0.50 to \$ 1.20 for BLV and from \$ 1.00 to \$ 1.25 for EI and capped the ceiling rate at \$ 1.20 for BLV and at \$ 1.25 for EI. The Commission also authorized Pacific to change its DA, BLV, EI, and four Centrex Optional Features resale prices to maintain a 17% margin between its retail and resale prices for these services.

TURN, the Office of Ratepayer Advocates (ORA), and the County of Los Angeles (LA) filed a joint application for rehearing of D.99-11-051. ORA did not join all sections of the application for rehearing. D.00-03-042 granted the joint motion of TURN, ORA, and the County of LA to make Pacific's rate increase approved in D.99-11-051 subject to refund pending review of the application for rehearing. In D.00-11-042, the Commission granted rehearing of D.99-11-051 to modify or add material findings and conclusions and to clarify misperceptions, such as those held by the Joint Applicants, with regard to Commission policy, authority and discretion. The Commission then denied rehearing.

2. Procedural Matters

Pursuant to Rule 77.7(f)(6), the otherwise applicable 30-day period for public review and comment is being waived.

3. Requirements for Awards of Compensation

Intervenors who seek compensation for their contributions in Commission proceedings must file requests for compensation pursuant to Pub. Util. Code §§ 1801-1812. (All statutory citations are to the Pub. Util. Code.) Section 1804(a) requires an intervenor to file a notice of intent (NOI) to claim compensation within 30 days after the prehearing conference or by a date established by the

Commission. The NOI must present information regarding the nature and extent of the customer's planned participation and an itemized estimate of the compensation the customer expects to request. The NOI may request a finding of eligibility.

Other code sections address requests for compensation filed after a Commission decision is issued. Section 1804(c) requires an eligible customer to file a request for an award within 60 days of issuance of a final order or decision by the Commission in the proceeding, and to provide "a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding." Section 1802(h) states that "substantial contribution" means that,

"in the judgment of the Commission, the customer's presentation has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees, and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation."

Section 1804(e) requires the Commission to issue a decision that determines whether the customer has made a substantial contribution and what amount of compensation to award. The level of compensation must take into account the market rate paid to people with comparable training and experience who offer similar services, consistent with § 1806.

4. NOI to Claim Compensation

TURN filed its NOI late, accompanied by a motion to accept its late request. A September 29, 1998 Administrative Law Judge's Ruling granted the motion and found TURN eligible for compensation. The Ruling also found that TURN had demonstrated significant financial hardship and qualifies as a customer under § 1802(b).

5. Substantial Contribution to Resolution of Issues

A party may make a substantial contribution to a decision in one of several ways.¹ It may offer a factual or legal contention upon which the Commission relied in making a decision,² or it may advance a specific policy or procedural recommendation that the Administrative Law Judge (ALJ) or Commission adopted.³ A substantial contribution includes evidence or argument that supports part of the decision even if the Commission does not adopt a party's position in total.⁴

TURN believes it has substantially contributed to D.99-11-051, D.00-03-042, and D.00-11-042 in eight areas. First, TURN supported updating the costs of the services at issue in this proceeding. Second, TURN opposed Pacific's proposed ceiling price of \$1.10 for DA. Third, TURN opposed Pacific's requested tariff

¹ Section 1802(h).

² *Id.*

³ *Id.*

⁴ The Commission has provided compensation even when the position advanced by the intervenor is rejected. D.89-03-063 (awarding San Luis Obispo Mothers For Peace and Rochelle Becker compensation in Diablo Canyon Rate Case because their arguments, while ultimately unsuccessful, forced the utility to thoroughly document the safety issues involved).

price for DA and primary rationale that a 46% markup over total service long run incremental cost (TSLRIC) was necessary. Fourth, TURN pointed out Pacific's methodological error in its TSLRIC cost estimates for both BLV and EI. Fifth, TURN supported a TSLRIC markup limited to between 13 and 22% for BLV and EI. Sixth, TURN contended that Pacific failed to show that BLV and EI are subject to price-constraining competition. Seventh, TURN prevailed on its motion to make rates subject to refund while the Commission considered TURN's application for rehearing. Eighth, the rehearing decision modified the earlier decision in response to TURN's arguments.

TURN reduces its claim for compensation to D.99-11-051 and D.00-03-042 by 10%, because it was not successful with respect to certain issues. TURN reduces its claim for compensation to D.00-11-042 by 50%, because it had limited success in its application for rehearing. TURN's proposed reductions apply only to its attorneys' time, not to its consultants' time.

Pacific states TURN's request should be denied or, at a minimum, substantially reduced. Pacific states TURN's positions were that 1) Pacific should be precluded entirely by NRF rules from proceeding with its application; 2) the price of DA service should remain at \$0.25; 3) the price ceiling of DA service should remain at \$0.25; 4) the costs of DA should be re-examined; 5) any revenues received by Pacific should be rebalanced against other services; and 6) the matter should be reheard. Pacific states the Commission rejected all but TURN's position on the price ceiling issue. Pacific also notes that the issues TURN identifies as issues where TURN made a substantial contribution are ancillary issues for which compensation should be limited. Pacific proposes that TURN not receive compensation for the drafting, filing and mailing of a late-filed pleading. Pacific also wants the Commission to offset any award by the amount

of the fundraising TURN collected from its members and the public in connection with this proceeding. Pacific opposes TURN's compensation claim for the work of its consultants, because those consultants worked primarily on costing issues. Pacific also opposes the increase in hourly rates for those consultants, because TURN provides no industry comparisons to justify the increases.

TURN disagrees with Pacific's characterization of TURN's major issues. TURN also disagrees with Pacific's recategorization of TURN's issues as ancillary. TURN concurs with Pacific that its award should be reduced by \$390.04 (2 hours for Paul Stein and \$50.04 for postage and copying) for the preparation of the motion for acceptance of a late-filed pleading. TURN notes that Pacific fails to cite to the intervenor compensation statute or a prior Commission decision to support the requested offset of any award. TURN disagrees that its consultants only worked on a re-examination of Pacific's cost data. TURN states the requested hourly rate increase for its consultants is to cover the impact of inflation on the hourly rates of witnesses who are familiar to the Commission.

We agree that TURN made substantial contributions to D.99-11-051. However, as Pacific notes, TURN did not prevail on all of the issues it advanced. Pacific incorrectly characterizes TURN's contribution as predominantly on ancillary issues. TURN's participation did impact our decision on DA, BLV and EI issues. TURN's concern about Pacific's cost studies prompted Pacific to conduct a re-look, which we considered in reaching our decision. TURN did not prevail on all of the issues it advanced concerning DA, including its opposition to the reduction in call allowances. We also rejected TURN's arguments concerning revenue neutrality and rate re-balancing.

TURN also substantially contributed to D.00-03-042, which we issued in conjunction with TURN's application for rehearing. TURN prevailed on its motion to make rates subject to refund pending disposition of its application for rehearing. TURN substantially contributed to D.00-11-042. TURN admits it had limited success in its application for rehearing. In fact, TURN did not prevail on any issue it raised in the application for rehearing. Instead, TURN's application prompted us to modify, clarify or add conclusions to support our decision. It is in this sense that TURN substantially contributed to the decision.

We find that TURN substantially contributed to D.99-11-051, D.00-03-042, and D.00-11-042. We concur with TURN and Pacific that TURN's claim should be reduced. The specific reductions we adopt are discussed below in Section 6.2. We also discuss TURN's proposed hourly rates for its attorneys and consultants in Section 6.3.

6. The Reasonableness of Requested Compensation

TURN requests compensation in the amount of \$110,913, as follows
(TURN's proposed reductions discussed in Section 6.2, below):

Attorney Costs

Thomas J. Long (59.25 hours @ \$260/hour-1998)	\$15,405.
Thomas J. Long (65.75 hours @ \$280/hour-1999)	\$18,410.
Minus 10%	\$ (3,382.)
Thomas J. Long (13.75 hours @ \$280/hour-1999)	\$ 3,850.
Minus 50%	\$ (1,925.)
Thomas J. Long (12 hours @ \$150/hour-Comp-2000)	<u>\$ 1,800.</u>
Subtotal	\$34,158.
Paul Stein (82.25 hours @ \$170/hour-1998)	\$13,983.
Paul Stein (105 hours @ \$190/hour-1999)	\$19,950.
Minus 10%	\$ (3,393.)
Paul Stein (48.75 hours @ \$190/hour-1999)	\$ 9,263.
Minus 50%	<u>\$ (4,631.)</u>
Subtotal	\$35,172.

Consultant's Fees

Terry Murray (101.25 hours @ \$300/hour)	\$30,375.
Minus 10%	\$ (3,038.)
Scott Cratty (58.90 hours @ \$175/hour)	\$10,308.
Minus 10%	<u>\$ (1,031.)</u>
Subtotal	\$36,614.

Other Costs

Photocopies	\$ 3,770.
Fax/phone	\$ 119.
Overnight mail/messenger	\$ 126.
Computerized Legal Research	\$ 837.
Postage	<u>\$ 117.</u>
Subtotal	\$ 4,969.
<u>Total</u>	\$ 110,913.

6.1. Overall Benefits of Participation

In D.98-04-059, the Commission required that customers demonstrate their participation was “productive,” as that term is used in § 1801.3, where the Legislature gave the Commission guidance on program administration. (*See* D.98-04-059, *mimeo.*, at 31-33, and Finding of Fact 42.) In that decision we discuss the requirement that participation be productive in the sense that the costs of participation should bear a reasonable relationship to the benefits realized through participation. Customers are directed to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. This exercise assists us in determining the reasonableness of the request and in avoiding unproductive participation.

We find TURN’s participation was productive in that the costs it claims for its participation were less than the benefits realized. As noted by TURN, its participation reduced the adopted tariff prices of BLV, EI, and DA. Similarly, TURN’s opposition to Pacific’s proposed DA ceiling price of \$1.10 influenced the reduction to \$0.46 and eliminated the likelihood of additional near term rate increases. TURN’s efforts produced benefits for ratepayers that outweigh the cost of participation.

6.2. Hours Claimed

TURN’s request includes time records for Thomas Long and Paul Stein by allocation to activity and issue. TURN allocates its attorneys’ time by generic issues and not by the seven issues it includes in its request. That allocation supports TURN’s proposed 10% reduction of its claim for its attorneys’ time for D.99-11-051 and D.00-03-042, because approximately 18% of its attorneys’ time was spent on DA, the area where TURN had the least impact. In

addition, TURN concurs with Pacific that the Commission should reduce its award by the two hours Stein spent preparing the motion to accept a late-filed pleading. TURN does not allocate its consultants' (Terry Murray and Scott Cratty) time by issue. Pacific states no compensation should be given, because TURN's consultants spent their time re-examining previously approved cost studies. Pacific also states Murray's re-examination of approved OANAD costs was discredited. TURN replies that Murray's testimony addressed a number of issues. Since TURN did not provide an allocation by issue, we must determine whether TURN's or Pacific's proposed reductions are reasonable. Murray's testimony in this proceeding and Cratty's activity description indicate an allocation of approximately 50% of their time to DA issues. We have accepted TURN's proposed reduction of 10% for its attorneys' time, because it reasonably discounts by approximately half the time TURN's attorneys spent on DA issues. Similarly, we will reduce Murray's and Cratty's hours by 25% for D.99-11-051 and D.00-03-042, approximately one half the time spent on DA issues.

TURN's proposed reduction of 50% of its attorneys' time for D.00-11-042 acknowledges TURN's limited success on rehearing and is within the range of our prior reductions where we have found a substantial contribution but rejected the intervenor's position. However, the 50% reduction must apply to both the attorneys' and the consultants' time.

TURN was one among other parties supporting several of the proposals. TURN does not propose a reduction for duplication in effort. Pacific notes that other parties opposed Pacific's request for a \$1.10 price ceiling for DA. In D.99-11-051 we described how our Public Advisor's Office had received over 34,000 comments from the general public on this application. This unusually

high level of consumer interest indicates it would not be in the public interest to reduce compensation for duplication.

Pacific's proposal to offset TURN's compensation award by any fundraising efforts finds no statutory or decisional support. We will not further consider that proposal.

6.3. Hourly Rates

TURN proposes new hourly rates of \$300 and \$280 for Thomas Long (for 2000 and 1999), and \$190 for Paul Stein (for 1999). TURN provides market rates and other information, previously submitted, to justify the request. The last approved hourly rates for Thomas Long and Paul Stein were \$260 and \$170 for 1998, adopted in D.99-07-045. Since 1998, Stein has represented TURN in a number of energy and telecommunications proceedings before the Commission. Based upon the information TURN has provided, it is reasonable to increase Stein's rates to the level requested by TURN. TURN provides comparable information to support the increase in Long's hourly rate. Long has extensive experience before this Commission, and it is reasonable to increase his hourly rate as proposed.

TURN proposes hourly rates of \$300 for Terry Murray (for 1998 and 1999) and \$175 for Scott Cratty (for 1998 and 1999). The last approved hourly rates for Terry Murray and Scott Cratty were \$250 and \$125, approved in D.98-04-025. As Pacific notes, TURN did not provide market rates to justify the increases for Murray and Cratty. However, §1806 also permits the Commission to award compensation that does not exceed the comparable market rate for services paid by the public utility. TURN states that the rate charged by Cratty and Murray to TURN is the same rate that they charge all of their business clients, including utilities such as AT&T and MCI. We find that increased

experience, inflation, and the overall increase in demand for telecommunications experts justify the increase in rates sought for Cratty and Murray. We will adopt the proposed hourly rate increases.

6.4. Other Costs

TURN requests \$4,969 for photocopying, fax/phone, research and postage. Pacific does not dispute this request. These expenses are generally reasonable, considering the length of this proceeding and TURN's participation. TURN concurs with Pacific that its award should be reduced by \$50.04 in postage and copying for the motion to accept a late-filed pleading. We will make that reduction.

7. Award

We award TURN \$104, 292, calculated as follows:

Attorney Costs

Thomas J. Long (59.25 hours @ \$260/hour-1998)	\$15,405.
Thomas J. Long (65.75 hours @ \$280/hour-1999)	\$18,410.
Minus 10%	\$ (3,382.)
Thomas J. Long (13.75 hours @ \$280/hour-1999)	\$ 3,850.
Minus 50%	\$ (1,925.)
Thomas J. Long (12 hours @ \$150/hour-Comp-2000)	<u>\$ 1,800</u>
Subtotal	\$34,158.
Paul Stein (80.25 hours @ \$170/hour-1998)	\$13,643.
Paul Stein (105 hours @ \$190/hour-1999)	\$19,950.
Minus 10%	\$ (3,359.)
Paul Stein (48.75 hours @ \$190/hour-1999)	\$ 9,263.
Minus 50%	<u>\$ (4,631.)</u>
Subtotal	\$34,866.

Consultant's Fees

Terry Murray (100.25 hours @ \$300/hour)	\$30,075.
Minus 25%	\$ (7,519.)
Terry Murray (1 hour @ \$300/hour)	\$ 300.
Minus 50%	\$ (150.)
Scott Cratty (56.90 hours @ \$175/hour)	\$ 9,958.
Minus 25%	\$ (2,490.)
Scott Cratty (2 hours @ \$175/hour)	\$ 350.
Minus 50%	<u>\$ (175.)</u>
Subtotal	\$30,349.

Other Costs

Photocopies	\$ 3,724.
Fax/phone	\$ 119.
Overnight mail/messenger	\$ 126.
Computerized Legal Research	\$ 837.
Postage	<u>\$ 113.</u>
Subtotal	\$ 4,919.
<u>Total</u>	\$104,292.

Consistent with previous Commission decisions, we will order that interest be paid on the award amount (calculated at the three-month commercial paper rate), commencing the 75th day after TURN filed its compensation request and continuing until the utility makes its full payment of award.

As in all intervenor compensation decisions, we put TURN on notice that the Commission Staff may audit TURN's records related to this award. Thus, TURN must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requests compensation, the actual time spent by each employee, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation may be claimed.

Findings of Fact

1. TURN has made a timely request for compensation for its contributions to D.99-11-051, D.00-03-042, and D.00-11-042.
2. TURN contributed substantially to D.99-11-051, D.00-03-042, and D.00-11-042.
3. TURN's participation was productive in that the costs it claims for its participation were less than the benefits realized.
4. In D.99-07-045, the Commission adopted hourly rates of \$260 and \$170 for 1998 for Thomas Long and Paul Stein.
5. TURN has requested new hourly rates for attorneys that are no greater than the market rates for individuals with comparable training and experience.
6. \$300 and \$280 per hour are reasonable compensation rates for Thomas Long's professional services in 2000 and 1999, considering his experience, effectiveness, and rates paid other attorneys.

7. \$190 per hour is a reasonable compensation rate for Paul Stein's professional services in 1999, considering his experience, effectiveness, and rates paid other attorneys.

8. TURN has requested hourly rates for consultants Terry Murray and Scott Cratty that have not been approved by the Commission.

9. \$300 per hour is a reasonable compensation rate for Terry Murray's professional services in 1998 and 1999, considering her experience, inflation, the increased demand for telecommunications experts, and the rates paid for her services by other public utilities.

10. \$190 per hour is a reasonable compensation rate for Scott Cratty's professional services considering his experience, inflation, the increased demand for telecommunications experts, and the rates paid for his services by other public utilities.

11. TURN's proposed reductions for its attorneys' time are reasonable.

12. TURN's proposed reductions for its consultants' time will be increased to include a comparable reduction for time spent on rehearing and DA issues.

13. The miscellaneous costs incurred by TURN are generally reasonable.

Conclusions of Law

1. TURN has fulfilled the requirements of §§ 1801-1812, which govern awards of intervenor compensation.

2. TURN should be awarded \$104,292 (calculated as shown in Section 7 of the foregoing opinion) for its contribution to D.99-11-051, D.00-03-042, and D.00-11-042.

3. This order should be effective today so that TURN may be compensated without unnecessary delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$104,292 in compensation for its substantial contribution to Decisions (D.) 99-11-051, D.00-03-042, and D.00-11-042.

2. Pacific Bell (Pacific) shall pay TURN a total of \$104,292 within 30 days of the effective date of this order. Pacific shall also pay interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release G.13, with interest, beginning March 20, 2001, and continuing until full payment is made.

3. This proceeding is closed.

This order is effective today.

Dated August 2, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.